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CERTAINTY, CONFIDENCE, COMPETITIVENESS

HELPING GOOD PROJECTS MOVE FORWARD SUSTAINABLY

CANADA'S NEW IMPACT ASSESSMENT SYSTEM

CANADA.CA/**ENVIRONMENTALREVIEWS**

Canada

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Certainty, Confidence, Competitiveness - Helping good projects move forward sustainably - Canada's new impact assessment system

MAKING CANADA COMPETITIVE

- The environment and the economy go hand in hand.
- Major projects represent more than $500 billion in potential development and good jobs in communities across Canada over the next decade.
- Efficient, credible, and predictable assessment and decision-making processes are critic... to attracting investment and maintaining the economic competitiveness of the country.
- Public confidence in the processes is key to the shared success of projects.

"The federal EA process should achieve two important objectives: building public confidence in the regulatory review process and maintaining and preserving investor confidence to ensure that Canada remains competitive."

Canadian Energy Pipeline Association, brief to the Expert Panel for the Review of Environmental Assessment Processes

LISTENING TO CANADIANS

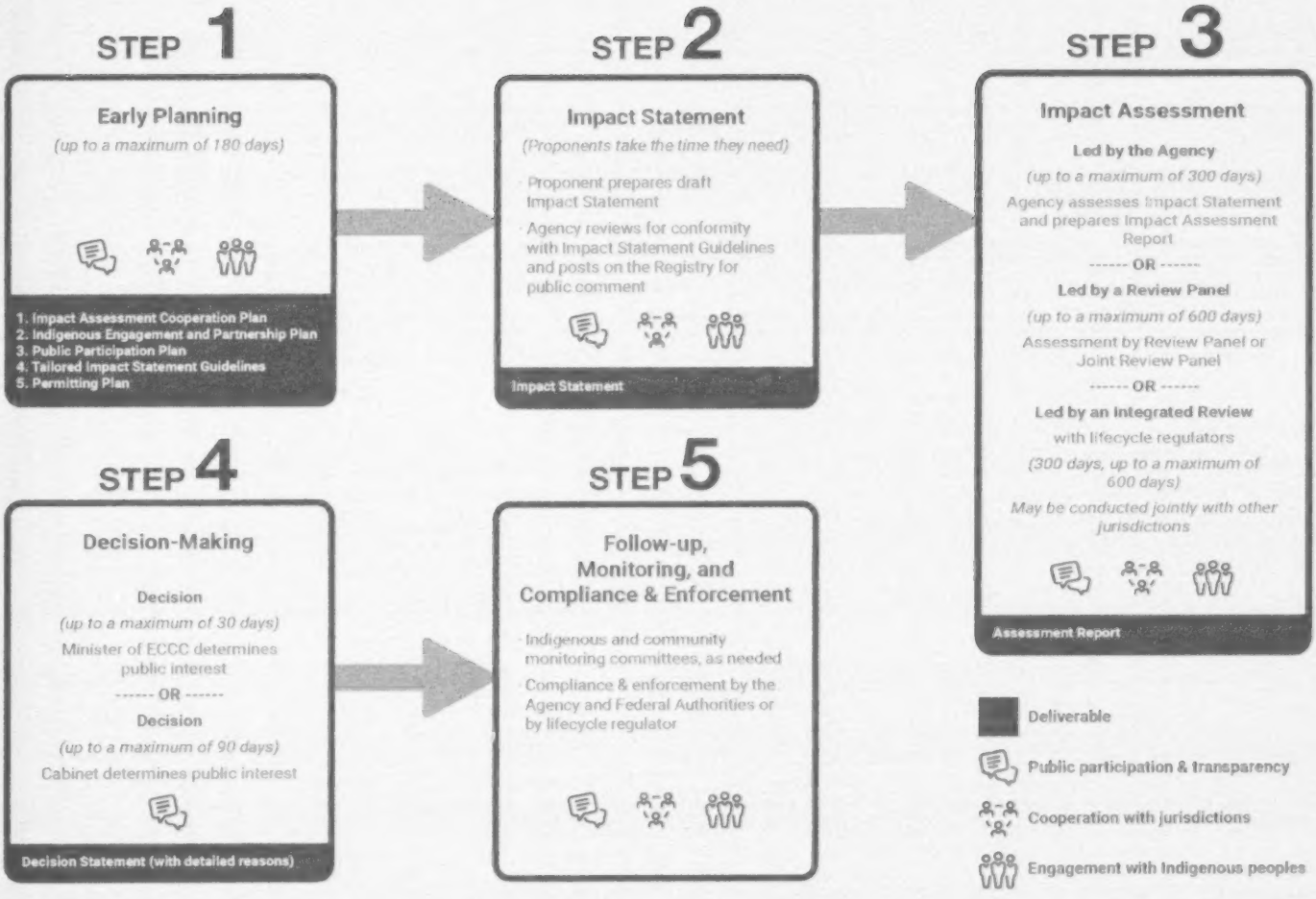
- **We engaged** with companies, provinces and territories, Indigenous people, environmental groups and the Canadian public over a 14-month period.
- **We also heard** that while project assessments are not an effective forum for resolving broader Crown-Indigenous matters, assessment processes must reflect government commitments and support broader initiatives and frameworks where relevant.

We heard that Canada needs a clear and predictable assessment process that provides certainty to proponents, earns the confidence of Canadians and investors, and supports Canadian economic competitiveness. Canadians want a credible process that supports timely decisions based on science and evidence, ensures good projects go ahead, and earns the confidence of Canadians and the investment community.

WHAT WE PROPOSE

We are establishing, through Bill C-69, a transparent and fair process that better positions Canada to create jobs and economic opportunities by building resource projects in Canada in a responsible and timely fashion while ensuring a sustainable future for generations to come.

PROPOSED PROCESS AT A GLANCE*


STEP 1
Early Planning
(up to a maximum of 180 days)
1. Impact Assessment Cooperation Plan
2. Indigenous Engagement and Partnership Plan
3. Public Participation Plan
4. Tailored Impact Statement Guidelines
5. Permitting Plan
STEP 2
Impact Statement
(Proponents take the time they need)
· Proponent prepares draft Impact Statement
· Agency reviews for conformity with Impact Statement Guidelines and posts on the Registry for public comment
Impact Statement
STEP 3
Impact Assessment
Led by the Agency
(up to a maximum of 300 days)
Agency assesses Impact Statement and prepares Impact Assessment Report
------ OR ------
Led by a Review Panel
(up to a maximum of 600 days)
Assessment by Review Panel or Joint Review Panel
------ OR ------
Led by an Integrated Review
with lifecycle regulators
(300 days, up to a maximum of 600 days)
May be conducted jointly with other jurisdictions
Assessment Report
STEP 4
Decision-Making
Decision
(up to a maximum of 30 days)
Minister of ECCC determines public interest
------ OR ------
Decision
(up to a maximum of 90 days)
Cabinet determines public interest
Decision Statement (with detailed reasons)
STEP 5
Follow-up, Monitoring, and Compliance & Enforcement
· Indigenous and community monitoring committees, as needed
· Compliance & enforcement by the Agency and Federal Authorities or by lifecycle regulator
Deliverable
Public participation & transparency
Cooperation with jurisdictions
Engagement with Indigenous peoples

Note: Regional and strategic assessments would be proactively conducted outside of individual project reviews. This will help inform project assessments, manage cumulative impacts, and support decision-making.

The legislation enacting this process is currently before Parliament and may be subject to change.

CLEAR CRITERIA FOR THE PROJECT LIST

We heard that criteria needed to be clearer about when a project is subject to a federal impact assessment. We also heard that current regulations were not developed in a transparent and open way.

- **We propose** two core criteria for revising the Project List: federal jurisdiction and environmental risk. Federal impact assessments would focus on projects that have the greatest potential for adverse environmental effects in areas of federal jurisdiction.
- Under the new system, a clear list of activities set out in regulations would determine whether a project is subject to an assessment. These activities, described as "designated projects," would be subject to the proposed impact assessment approach.
- Consultations will continue with Canadians about how to determine the activities to be included under the *Regulations Designating Physical Activities*, also known as the Project List.

These regulations are intended to be ready when the legislation comes into force. For more information on the Project List consultations, please see the additional resources section at the end of this document.

Efficient and predictable

The new assessment process is designed to enhance predictability and avoid delays – for example, caused by incomplete documentation and late requests for more information – by clearly setting out information needs during early planning. Guidelines tailored for each project would make all requirements clear to proponents from the start. A permitting plan, also developed during early planning, would result in a timelier regulatory phase.

A SINGLE AGENCY TO LEAD REVIEWS

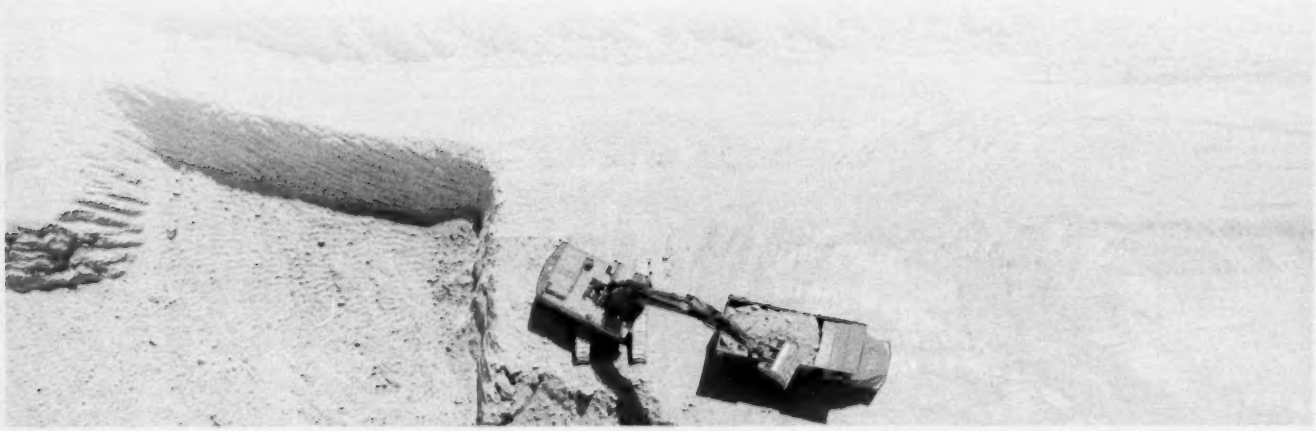
We heard that the process should be clear, predictable, and avoid duplication. Currently, companies can be faced with different agencies, timelines, and information requirements, or different public and Indigenous engagement processes, depending on the kind of project they are putting forward.

We are creating a single agency to lead all federal reviews.

- The Canadian Environmental Assessment Agency will become the Impact Assessment Agency of Canada.
- The Impact Assessment Agency of Canada will lead and coordinate an open and transparent process where proponents know from the outset what is expected of them, where the views of potentially affected communities are heard, and where Indigenous people are involved throughout all phases of the review.
- To ensure the new Agency is well equipped to deliver on its mandate, we are increasing capacity, adding new resources and expertise, creating new mechanisms to leverage expertise in other federal departments, and creating greater opportunities for collaborating with provinces, territories, and Indigenous groups.
- The new Agency will ensure that processes, requirements and expectations are clarified from the start. For projects involving lifecycle energy regulators such as the new Canadian Energy Regulator (formerly the National Energy Board), the Canadian Nuclear Safety Commission, or offshore boards, the Agency will work with the regulator to ensure that an integrated process meets the needs of all decision makers.

"Having a single agency responsible for conducting all assessments under the Impact Assessment Act will help ensure consistent application of the law for all sectors and projects."

Pembina Institute, brief to the Standing Committee on Environment and Sustainable Development



EXPERTISE OF LIFECYCLE REGULATORS

We heard about the importance of including the expertise and experience of lifecycle regulators and offshore boards in project reviews.

The new system is designed to leverage the long-standing expertise and knowledge invested in energy regulators.

- The proposed legislation stipulates that designated energy projects that are also subject to regulation by the Canadian Energy Regulator or by the Canadian Nuclear Safety Commission or offshore boards would be assessed by an integrated review panel that would include representatives recommended by the regulator.
- The regulator would also participate in engagement and Crown consultation at all stages of the regulatory processes. This will ensure a seamless transition to the monitoring and compliance phase of a project's life.
- The regulator would ensure that safety and other areas of regulator responsibility are considered as part of the single, integrated assessment.
- Non designated energy projects would be assessed by the regulator.

Pipeline Project

Pipelines help supply Canada and North America with the energy it needs. Under the new proposed system, proponents would get greater clarity on whom to consult and engage through Indigenous Engagement and Partnership Plans and Public Participation Plans developed during the new early planning phase. This reduces the risk of delaying the process to engage more widely. Clear criteria set out in the regulations would dictate when the Minister could "stop the clock." That means a more timely and predictable environment for Canada's pipeline projects.

TIMELINES

The timeline for integrated reviews would be 300 days. For more complicated projects, the Minister could set the review to a maximum of 600 days. The timeline would be determined at the end of the early planning phase on a project-by-project basis, taking into account the complexity of the project, the potential effects, public concerns, and opportunities for cooperation with other jurisdictions.

OFFSHORE ACCORDS

In recognition of the joint management of the offshore accords with Nova Scotia and Newfoundland and Labrador, the new Agency would collaborate with the offshore boards in reviewing major offshore oil and gas projects. The offshore boards would continue to be responsible for making their regulatory decisions under the Accord Acts.

We heard that requirements and expectations need to be clear from the outset – including an understanding of the information that is required to complete the assessment, what studies are needed, who needs to be consulted, and what permits might eventually be needed.

Similarly, Indigenous leaders and industry representatives have called for federal leadership with respect to Indigenous consultation activities.

The new early planning phase would streamline the review:

- Clarifying who needs to be consulted and how.
- Identifying potential issues early enough to find ways to address them.
- Setting out what information and studies will be required for the review.
- Establishing what will be examined during the impact assessment phase.

Many good proponents are already doing early planning and outreach work. The new process allows the Agency to recognize work that has been done and provide greater guidance and support earlier in the process.

- Early planning would provide a time-bound process in which to identify roles and responsibilities of the Agency, the proponent, and other jurisdictions, clearly laid out during an assessment. Reasons for any delays would be posted publicly on the Agency's website.
- It is expected that time invested at the beginning of an assessment will result in project designs that better respond to critical issues raised by affected groups and result in faster overall reviews and more timely decisions.
- Deliverables:
  - Tailored Impact Statement Guidelines
  - Cooperation Plan
  - Indigenous Engagement and Partnership Plan
  - Public Participation Plan
  - Permitting Plan

Liquefied Natural Gas Project

The safe and sustainable export of Canada's liquefied natural gas reserves has the potential to create significant investment, jobs and economic growth for our country. Developing that potential depends on a clear and efficient process. The early planning phase under the new Act is intended to scope out potential issues, establish information and research requirements, and determine engagement and consultation needs before an assessment begins. This would eliminate multiple rounds of additional information requests, provide greater clarity on community input, and help resolve issues before project plans are finalized. Based on input through the early planning phase, proponents would be encouraged to consider alternatives and the use of the best available technology.

DELIVERABLES AT A GLANCE

Engaging early and clarifying requirements upfront would streamline the overall process and lay the groundwork for a stronger working relationship with potentially affected communities and jurisdictions.

Tailored Impact Statement Guidelines

Impact assessments will review what is most relevant concerning a project.

- Guidelines for producing the impact statement, tailored for each project and consistent with the scope and complexity of the project, would provide a clear statement of specific issues to be covered, including the positive and negative economic, social, health, and environmental effects, and identifying what studies may be required.
- The list of factors to be considered for the assessment and for decision making would be tailored to each project.
- The tailored guidelines would be made public to ensure the process is clear and transparent for all stakeholders.

Cooperation Plan

- This would be established between the Agency and jurisdictions on the assessment process. It may include harmonized timelines, when possible, with other jurisdictions, joint consultation activities and other actions aimed at reducing duplication of effort for proponents, Indigenous groups, and the public.

Indigenous Engagement and Partnership Plan

Proponents cannot be expected to be responsible for Indigenous engagement all by themselves.

- Before an assessment begins, the Agency would develop an engagement and partnership plan in collaboration with Indigenous peoples and other jurisdictions.
- The plan would set out how each of these groups would be engaged and how the parties would work together throughout the assessment process and, where relevant, seek to align timelines to enhance effectiveness and reduce duplication.
- That may include, where relevant, written agreements on how Indigenous knowledge provided in confidence will be shared and protected.

Public Participation Plan

- The Public Participation Plan would set out how the public would be engaged during the assessment, ensuring that the process is open and transparent.
- Developed through consultations during early planning, the participation plan would provide all interested parties with an opportunity to contribute to the review process within the time specified by the Agency.
- There would be multiple ways to provide input and different levels of engagement.

Permitting Plan

Identifying information needs for permits upfront can avoid delays during the permitting phase and may even allow construction of approved projects to start sooner.

- A Permitting Plan would clarify upfront what permits, licences or authorizations may be required from other regulators or jurisdictions.
- The Agency, and regulating departments would work with proponents to identify timelines, information, and other requirements needed to better position proponents for the permitting process to avoid delays following a positive impact assessment decision.

We heard that the current process lacks the flexibility needed to harmonize review processes between the federal and provincial governments, resulting in duplication, red tape, and sometimes lengthy delays.

The proposed Act provides the Minister of Environment and Climate Change with flexibility to better align the federal process with others.

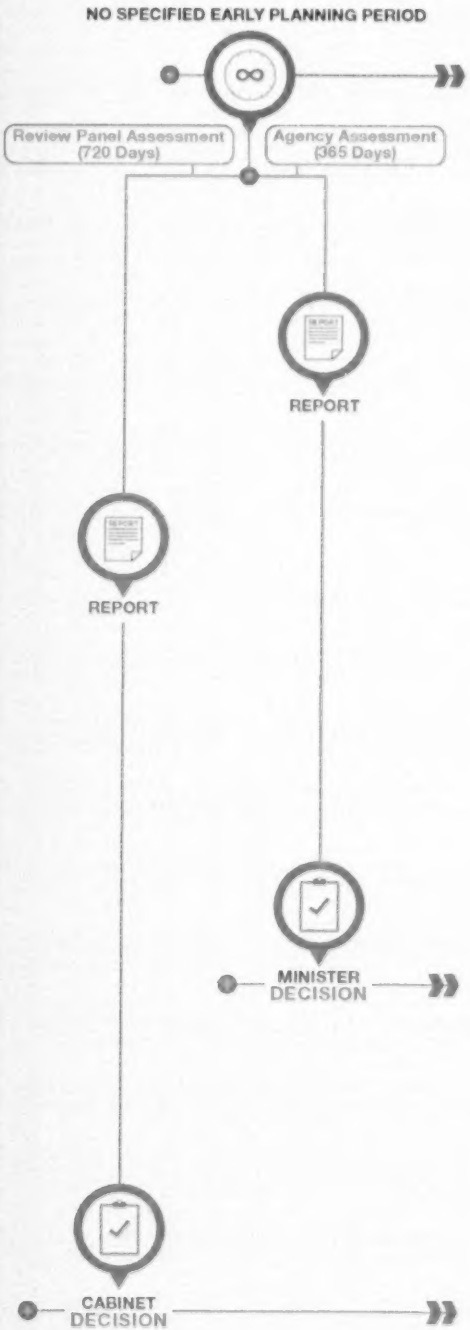
- If a project requires an assessment by another jurisdiction, the new Agency would work cooperatively to plan a process that meets the requirements of all decision makers. To support this key objective, the Agency would seek to develop cooperation agreements with interested jurisdictions. These discussions are already underway and are expected to further clarify and enhance collaborative activities for individual projects.
- The new legislation would continue the potential for substitution, which allows the process in an identified jurisdiction to replace the federal one as long as it meets the same standards.

Positive Benefits, Improved Cooperation

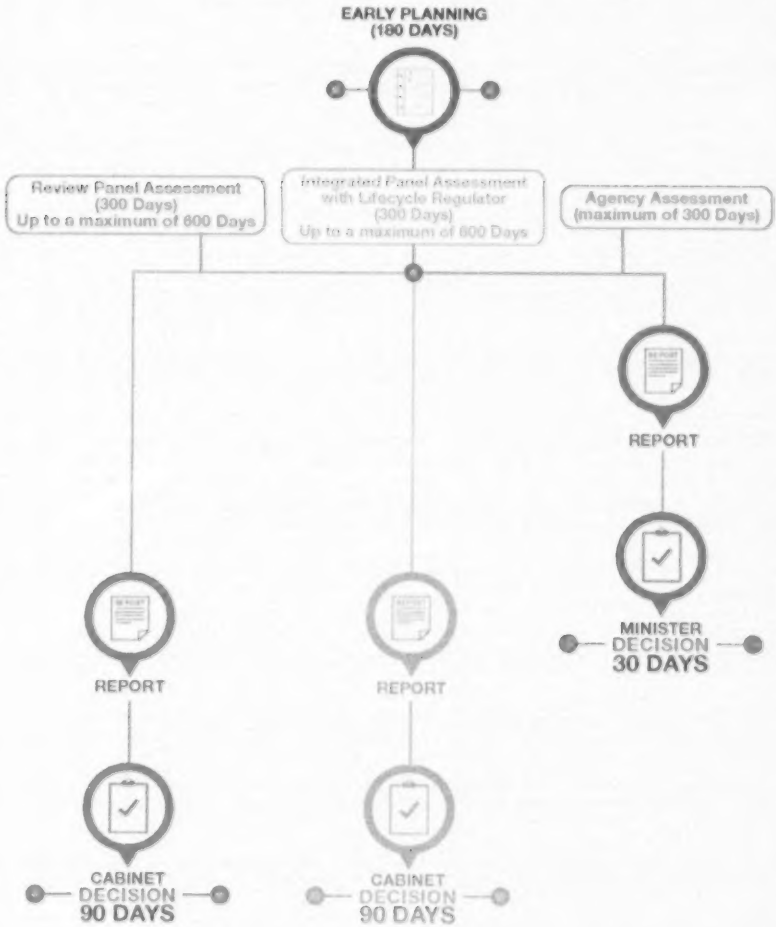
Under the new system, projects would benefit from a comprehensive examination of benefits as well as negative impacts. For example, consideration of a project's economic benefits, such as being able to meet increased demands for energy as Canada's economy grows, or positive impacts on Canada's climate change commitments, would be considered in project decisions. We are also taking steps to reduce the sometimes-lengthy delay between federal and provincial decisions on a project. The new Act would create opportunities to align federal and provincial assessment processes for decisions to be taken at the same time.

CURRENT VS. PROPOSED NEW SYSTEM

CEAA 2012



PROPOSED IMPACT ASSESSMENT PROCESS


EARLY PLANNING (180 DAYS)
Review Panel Assessment (300 Days) Up to a maximum of 600 Days
Integrated Panel Assessment with Lifecycle Regulator (300 Days) Up to a maximum of 600 Days
Agency Assessment (maximum of 300 Days)
REPORT
REPORT
REPORT
MINISTER DECISION 30 DAYS
CABINET DECISION 90 DAYS
CABINET DECISION 90 DAYS

Note: not to scale nor a complete representation of the proposed process. For more detailed information on steps, timelines and proponent responsibilities under the new process, please consult the Technical Guide.

FASTER TIMELINES

We heard that the current process is too long and subject to unpredictable interruptions and delays. We heard that what matters is the total time from starting the impact assessment to putting shovels in the ground for those projects that are permitted to proceed.

Efficiency and certainty go to the heart of competitiveness.

We are establishing shorter timelines, enshrined in the legislation and managed in the context of clear criteria, to help keep the new process on track and predictable, and to support more timely decision making.

Assessment phase

- Under the proposed Act, timelines would be reduced to a maximum of 300 days for assessments led by the new Agency (down from 365 days), and a maximum of 600 days for assessments led by a review panel (down from 720 days).
- For integrated panel reviews with lifecycle regulators, the timeline would be 300 days with the ability to set it to a maximum of 600 days for more complex projects.
- The proposed legislation provides flexibility to set shorter timelines, depending on the scope and scale of a project, or to adjust timelines to facilitate cooperation with another jurisdiction. Timelines will be set at the end of the early planning phase to enhance clarity and certainty.

Decision making

- CEAA 2012 provides timelines for assessment processes but no specific time limit on environmental assessment decisions by the Minister or Cabinet. The new legislation would require the Minister to render a decision no later than 30 days after the impact assessment report is released. In the case of review panels, the federal Cabinet would be required to make a decision within 90 days of the release of the report. Written rationales for decisions will be required and posted on the Agency's website.

MANAGING TIMELINES

» Provisions in new *Information Requirements and Time Management Regulations* would set clear limits to rigorously manage when timelines can be suspended, including limits on late information requests.

The criteria proposed for stopping the clock include:

» A request from the proponent

» A design change by the proponent that could change the potential impacts of the project

» Critical information needed to complete the assessment

» Non-payment for cost-recoverable activities (until the payment has been received)

GREATER LEADERSHIP WORKING WITH INDIGENOUS PEOPLES

We heard that proponents are looking to the federal government for leadership on engaging with Indigenous peoples.

- The Government of Canada is committed to working in partnership with Indigenous peoples to ensure that Indigenous rights and interests are recognized and taken into account throughout the assessment.
- The Agency would lead Crown engagement and ensure a single point of contact for engagement with Indigenous peoples. Engagement will begin early and be ongoing throughout the review of designated projects with a goal of meaningful engagement aimed at achieving mutually acceptable outcomes.
- During early planning, the Agency would engage with any potentially affected Indigenous groups to determine how they wish to be consulted and participate in the assessment. This would be set out transparently in a detailed Indigenous Engagement and Partnership Plan.
- Proponents have found that it is in their best interest to proactively engage Indigenous groups, as concerns raised in early planning will shape the required impact assessment statement in the next phase of the process. Many companies already do this.
- The participation of Indigenous peoples would be supported by expanded and streamlined participant funding.
- The Agency will also support Indigenous groups to build capacity for impact assessment-related capacity development outside of specific project assessments.

Meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent. At times, there may be circumstances where agreement cannot be reached. In those cases, the Government of Canada will ensure the interests of Indigenous peoples are appropriately accommodated. The Government of Canada confirms its commitment to reconciliation and to ensuring that decision making processes are based on mutual respect and dialogue.

"Our relationships with Indigenous groups, local communities, Canadians and other industries are critical to our success. As well, for many of our member companies, these communities are not only where they operate, but where they live."

Canadian Association of Petroleum Producers, brief to the Expert Panel for the Review of Environmental Assessment

We heard concerns that the current assessment process only considers whether projects damage the environment.

Under the new process, positive economic, social, and health considerations, contributions to sustainability and other impacts would now be factors for assessment and inform decisions whether a project is in the public interest.

- In broadening the factors an impact assessment must consider, the new law would require the Agency to identify positive environmental, economic, social, and health impacts in its report. Gender-based analysis will also be conducted as part of the assessment to identify potential effects and associated mitigations regarding vulnerable communities.
- Industry's efforts to use new or innovative technology to reduce environmental impacts, where feasible, would also be taken into account.

We heard that decision-making should remain with the Minister or Cabinet. Canadians told us that the final decision should rest with elected officials that can be held accountable.

- To ensure that the process remains transparent and accountable, clear Decision Statements would be issued for each review, with written rationales for the decision posted to the Agency's website.

WHY GENDER-BASED ANALYSIS PLUS (GBA+)?

The government already does GBA+ in many areas. The Canada Border Services Agency conducted a GBA+ of plans to introduce new electronic kiosks to improve border services at Canada's busiest airports. These kiosks include biometrics and a supporting mobile application. The analysis found that face-recognition technology worked differently on men, women, and children. It also found that men and women – especially those coming from outside North America – use mobile technology differently. That prompted the Agency to make changes to the kiosks and its strategy for using them.

The new legislation will require that impact assessments consider the intersection of sex and gender with other identity factors. This is also known as GBA+ and is an analytical tool used to assess how diverse groups of women, men and gender-diverse people may experience policies, programs, and initiatives. The "plus" in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. GBA+ also considers many other identity factors, like race, ethnicity, religion, age, and mental or physical disability. For example, an influx of temporary workers needed to develop a project may put pressure on local social services, or have positive or negative effects on the local housing or job markets. These effects could be different for women and men, or could have a greater impact on vulnerable populations.

NO POLICY DISCUSSIONS INSIDE PROJECT REVIEWS

We heard that it is impractical and unfair to try to resolve complex environmental policy issues within the assessment of individual project proposals.

Managing the cumulative effects of development goes beyond a single project. We will take a more deliberate and structured approach to understanding the "big picture" of the environment, regionally and nationally.

- Regional assessments, conducted in collaboration with interested provinces, territories and Indigenous peoples, would guide planning and management of cumulative effects (e.g., biodiversity and species at risk), identify potential impacts on the rights and interests of Indigenous peoples, and inform individual project assessments and future policy considerations.
- Strategic assessments, starting with an assessment of climate change, would provide proponents, decision-makers, and the public with transparent, consistent guidance on how existing environmental frameworks would be considered in the impact assessment process.
- The government is already looking for public input into how the strategic assessment of climate change should be conducted.

"Addressing the lack of strategic environmental assessment and regional environmental assessment is central to improving the existing process and providing a venue for addressing broader public policy issues and cumulative effects, as well as for providing authoritative guidance to project specific EAs."

Canadian Electricity Association, brief to the Expert Panel for the Review of Environmental Assessment Processes

A SMOOTH TRANSITION BETWEEN SYSTEMS

We heard concerns that projects currently in the system should not have to start over. The government shares this perspective and agrees that a smooth transition to the new process is a priority.

- Any assessment of a designated project by the Canadian Nuclear Safety Commission or the National Energy Board commenced under CEAA 2012 for which a decision statement has not been issued under Section 54 of CEAA 2012 before the coming into force of the new legislation will continue under CEAA 2012.
- Any assessment by the Canadian Environmental Assessment Agency of a designated project commenced under CEAA 2012 before the coming into force of the new legislation, and for which the Agency has posted a Notice of Commencement, will continue under CEAA 2012. Proponents would be able to voluntarily request to opt into the new process identified in Bill C-69 if desired.

CONTINUOUS IMPROVEMENT

We are still listening.
We invite you to share your comments and concerns to help us fine-tune a system that serves all Canadians.

- To support technical and subject matter expertise, the proposed legislation also provides for the establishment of bodies to advise the new Agency:
  - A technical advisory committee
  - An Indigenous advisory committee.
- To support governance and transparency of the new system, a Minister's Advisory Council would be created to provide advice directly to the Minister on policy and implementation issues as well as potential priorities for regional and strategic assessments. Membership and mandate of the council will be developed going forward.

NEXT STEPS

- The proposed legislation is currently going through the Parliamentary process. The House of Commons has finished considering Bill C-69 and referred it to the Senate, which will consider it in turn. It is anticipated that the bill could pass Parliament, and receive Royal Assent in 2019, and come into force in spring 2019.
- At the same time, the government is developing regulations to support implementation of the law:
    - The Regulations Designating Physical Activities, also known as the Project List, identify projects that would be subject to the Impact Assessment Act.
    - The Information Requirements and Time Management Regulations would set out the information that a project proponent is required to provide at the beginning of an impact assessment and the guidance documents the Agency is required to provide to guide the impact assessment. The regulations also set out clear criteria under which the legislated timelines for an impact assessment could be suspended to stop the clock.
- Canadians have already been asked to provide input into the regulatory development process, and will have additional opportunities to express their views as we continue to move forward.

ADDITIONAL RESOURCES

For more information on the proposed new system, please consult the following resources at canada.ca/environmentalreviews:

The Proposed Impact Assessment System: A Technical Guide:
(https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/a-technical-guide.html)

Consultation Paper on Approach to revising the Project List
(https://www.impactassessmentregulations.ca/project-list)

Consultation Paper on Information Requirements and Time Management Regulations
(https://www.impactassessmentregulations.ca/information-management-and-time-management)

For more information on gender-based analysis plus, visit the Status of Women Canada website.
(https://www.swc-cfc.gc.ca/gba-acs/index-en.html)

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